



U.S. Department of Justice

United States Attorney
Southern District of New York

MEMO ENDORSED

By ECF

The Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

86 Chambers Street
New York, New York 10007

February 28, 2023

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Re: *Kasirer LLC v. United States Small Business Administration Office of Capital Access*, No. 22 Civ. 6989 (VEC)

Dear Judge Caproni:

This Office represents the United States Small Business Administration (“SBA”) in the above-referenced action, in which Petitioner Kasirer LLC (“Kasirer”) seeks judicial review of a loan review decision by SBA determining that Kasirer was ineligible for the Paycheck Protection Program (“PPP”) loan it received under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020), and thus was also ineligible for any subsequent forgiveness of that loan because it engages in lobbying activities. *See* Dkt. No. 6.

Pursuant to Rule 5(B)(ii) of this Court’s Individual Practices in Civil Cases, and with Kasirer’s consent, SBA respectfully seeks leave to file the certified administrative record, which is due February 28, 2023, *see* Dkt. No. 14, under seal.¹ A large portion of the administrative record consists of payroll, banking, tax return, and human resources records submitted by Kasirer in connection with its loan-forgiveness application. This information, which includes specific information regarding Kasirer’s employees, such as their pay and benefits, is not relevant to the disputed issue in this litigation—namely, whether SBA’s loan review decision was clearly erroneous because (1) Kasirer’s application for a PPP loan was submitted prior to publication of the interim final rule incorporating the definition of ineligible businesses in 13 CFR § 120.110, *see* 85 FR 20811; (2) businesses substantially similar to Kasirer’s have received PPP loan forgiveness from SBA; or (3) Kasirer’s primary business activity and core focus is not lobbying.

SBA respectfully submits that sealing is appropriate notwithstanding the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006), in light of the privacy interests of third parties—namely, Kasirer’s employees. *See, e.g., Beverly Hills Teddy Bear Co. v. Best Brands Consumer Prod., Inc.*, No. 19 Civ. 3766 (GHW), 2020 WL 7706741, at *2 (S.D.N.Y. Dec. 29, 2020) (“Higher values that may

¹ Pursuant to Rule 5(B)(iii) of the Court’s Individual Practices, the certified administrative record is being filed under seal on ECF herewith, with the exception of the Kasirer PPP Forgiveness Calculator, which is an Excel spreadsheet that has been emailed to the Court and Kasirer in its native format.

justify the sealing of documents include . . . the privacy interests of third-parties.” (citing *E.E.O.C. v. Kelley Drye & Warren LLP*, No. 10 Civ. 655 (LTS) (MHD), 2012 WL 691545, at *2 (S.D.N.Y. Mar. 2, 2012)); *Republic of Turkey v. Christie’s Inc.*, No. 17 Civ. 3086 (AJN), 2020 WL 7338074, at *1 (S.D.N.Y. Sept. 11, 2020) (“[T]he parties’ and third parties’ privacy interests outweigh the ‘value of such information to those monitoring the federal courts.’”). In similar PPP loan review cases, courts have permitted SBA to file the administrative record under seal, especially where, as here, information regarding employees’ pay and other payroll, banking, tax return, and human resources records are not likely to be relevant to any issue decided by the Court. *See, e.g., Cashco Financial Services, Inc. v. United States Small Business Administration*, No. 3:22 Civ. 1234 (D. Or.), Dkt. Nos. 9, 10; *United Finance Co. v. United States Small Business Administration*, No. 3:22 Civ. 1273 (D. Or.), Dkt. Nos. 8, 11; *BP Aero Engine Services, LLC, et al. v. United States Small Business Administration, et al.*, No. 4:22 Civ. 486 (N.D. Tex.), Dkt. Nos. 13, 14. SBA requests leave to do the same here.

I thank the Court for its consideration of this submission.

Respectfully,

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Application GRANTED.

SO ORDERED.



Date: 3/2/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE